

By the Committee on Criminal Justice; and Senator Brandes

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1                                   A bill to be entitled  
2       An act relating to sentencing; amending s. 921.002,  
3       F.S.; specifying requirements for sentencing and  
4       appeals of sentences for offenses committed on or  
5       after a certain date; authorizing upward departures of  
6       sentences under certain circumstances; amending s.  
7       921.0024, F.S.; providing applicability; creating  
8       requirements for permissible sentences for nonstate  
9       prison sanctions and state prison sanctions;  
10      authorizing a judge to depart from the guidelines  
11      under certain circumstances; prohibiting departure  
12      sentences under certain circumstances; creating s.  
13      921.00261, F.S.; providing applicability; defining the  
14      term "upward departure sentence"; specifying  
15      requirements for imposing an upward departure  
16      sentence; providing a circumstance under which a  
17      sentence is subject to appellate review; providing  
18      aggravating circumstances under which an upward  
19      departure sentence is reasonably justified; amending  
20      s. 924.06, F.S.; authorizing a defendant to appeal a  
21      sentence outside a specified range; amending s.  
22      924.07, F.S.; authorizing the state to appeal a  
23      sentence outside a specified range; creating s.  
24      950.021, F.S.; authorizing a court to sentence certain  
25      offenders to a term in county jail for up to 24 months  
26      if the offender meets specified criteria and if the  
27      county has a contract with the Department of  
28      Corrections; providing contractual requirements;  
29      requiring specific appropriations; providing for such

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30 appropriations; requiring validation of per diem  
31 rates; reenacting s. 958.04(3), F.S., relating to  
32 judicial disposition of youthful offenders, to  
33 incorporate the amendments made to ss. 924.06 and  
34 924.07, F.S, in references thereto; providing an  
35 effective date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Present paragraphs (g), (h), and (i) of  
40 subsection (1) of section 921.002, Florida Statutes, are  
41 redesignated as paragraphs (h), (i), and (k), respectively, new  
42 paragraphs (g) and (j) are added to that subsection, present  
43 paragraphs (g) and (h) of that subsection are amended, present  
44 subsection (4) of that section is redesignated as subsection  
45 (5), and a new subsection (4) is added to that section, to read:

46 921.002 The Criminal Punishment Code.—The Criminal  
47 Punishment Code shall apply to all felony offenses, except  
48 capital felonies, committed on or after October 1, 1998.

49 (1) The provision of criminal penalties and of limitations  
50 upon the application of such penalties is a matter of  
51 predominantly substantive law and, as such, is a matter properly  
52 addressed by the Legislature. The Legislature, in the exercise  
53 of its authority and responsibility to establish sentencing  
54 criteria, to provide for the imposition of criminal penalties,  
55 and to make the best use of state prisons so that violent  
56 criminal offenders are appropriately incarcerated, has  
57 determined that it is in the best interest of the state to  
58 develop, implement, and revise a sentencing policy. The Criminal

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59 Punishment Code embodies the principles that:

60 (g) An upward departure sentence, as defined in s.  
61 921.00261, must be articulated in writing by the trial court  
62 judge and made only when circumstances or factors reasonably  
63 justify such sentence. The level of proof necessary to establish  
64 facts that support an upward departure sentence is a  
65 preponderance of the evidence.

66 (h) ~~(g)~~ Except as provided in s. 921.0024(3), the trial  
67 court judge may impose a sentence up to and including the  
68 statutory maximum for any offense, including an offense that is  
69 before the court due to a violation of probation or community  
70 control.

71 (i) ~~(h)~~ A sentence for an offense committed on or after  
72 October 1, 1998, but before October 1, 2017, may be appealed on  
73 the basis that it departs from the Criminal Punishment Code only  
74 if the sentence is below the lowest permissible sentence or as  
75 enumerated in s. 924.06(1).

76 (j) A sentence for an offense committed on or after October  
77 1, 2017, may be appealed on the basis that it departs from the  
78 Criminal Punishment Code if the sentence is below the lowest  
79 permissible sentence provided in s. 921.0024(3); is outside the  
80 range authorized by s. 921.0024(3); or is as enumerated in s.  
81 924.06(1).

82 (4) As provided in s. 921.00261, a court may impose an  
83 upward departure sentence based upon circumstances or factors  
84 that reasonably justify the aggravation of the sentence. The  
85 level of proof necessary to establish facts supporting an upward  
86 departure sentence is a preponderance of the evidence. When  
87 multiple reasons exist to support an upward departure sentence,

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88 such sentence shall be upheld when at least one circumstance or  
89 factor justifies such sentence regardless of the presence of  
90 other circumstances or factors found not to justify such  
91 sentence. Any upward departure sentence must be explained in  
92 writing by the trial court judge.

93 Section 2. Present subsections (3) through (7) of section  
94 921.0024, Florida Statutes, are redesignated as subsections (4)  
95 through (8), respectively, and a new subsection (3) is added to  
96 that section, to read:

97 921.0024 Criminal Punishment Code; worksheet computations;  
98 scoresheets.-

99 (3) (a) This subsection applies to any felony offense,  
100 except a capital felony, committed on or after October 1, 2017.

101 (b) The lowest permissible sentence is the minimum sentence  
102 that may be imposed by the trial court, absent a valid reason  
103 for departure.

104 (c) The lowest permissible sentence is any nonstate prison  
105 sanction in which the total sentence points equal or are less  
106 than 44 points. The trial court may increase the total sentence  
107 points by up to, and including, 25 percent. If the total  
108 sentence points exceed 44 points as a result of this increase,  
109 the court may not impose a state prison sentence that is longer  
110 than the lowest permissible sentence in prison months calculated  
111 pursuant to paragraph (d).

112 (d) If the total sentence points exceed 44 points, the  
113 lowest permissible sentence in prison months shall be calculated  
114 by subtracting 28 points from the total sentence points and  
115 decreasing the remaining total by 25 percent. The total sentence  
116 points shall be calculated only as a means of determining the

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117 lowest permissible sentence. The trial court may impose  
118 sentences under this subsection or s. 921.00261 concurrently or  
119 consecutively. However, any sentence to state prison must exceed  
120 1 year. If the lowest permissible sentence in prison months  
121 exceeds the statutory maximum sentence as provided in s.  
122 775.082, the lowest permissible sentence in prison months must  
123 be imposed. If the total sentence points are greater than or  
124 equal to 363, the court may sentence the offender to life  
125 imprisonment. An offender sentenced to life imprisonment under  
126 this subsection is not eligible for any form of discretionary  
127 early release, except executive clemency or conditional medical  
128 release under s. 947.149. This subsection does not supersede any  
129 requirement in subsection (1) to impose a statutory maximum  
130 sentence.

131 (e) The trial court may impose a state prison sentence that  
132 does not vary upward by more than 25 percent from the lowest  
133 permissible sentence in prison months calculated pursuant to  
134 paragraph (d). However, no sentence imposed pursuant to this  
135 paragraph may exceed the statutory maximum sentence as provided  
136 in s. 775.082.

137 (f) Except as provided in s. 921.00261, the trial court may  
138 not impose a sentence that varies upward by more than 25 percent  
139 from the lowest permissible sentence in prison months calculated  
140 pursuant to paragraph (d). The permissible range for sentencing  
141 for an upward departure sentence imposed by the court pursuant  
142 to s. 921.00261 is the lowest permissible sentence up to and  
143 including the statutory maximum, as provided in s. 775.082, for  
144 the primary offense and any additional offense before the court  
145 for sentencing.

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146 Section 3. Section 921.00261, Florida Statutes, is created  
147 to read:

148 921.00261 Upward departure sentence; aggravating  
149 circumstances.—

150 (1) (a) This section applies to any felony offense, except a  
151 capital felony, committed on or after October 1, 2017.

152 (b) The sentence imposed pursuant to s. 921.0024(3) (d) or  
153 (3) (e) is assumed to be appropriate for the offender. A sentence  
154 that the trial court is authorized to impose pursuant to s.  
155 921.0024(3) is not an upward departure sentence. As used in this  
156 section, the term "upward departure sentence" means a state  
157 prison sentence that varies upward by more than 25 percent from  
158 the lowest permissible sentence in prison months calculated  
159 pursuant to s. 921.0024(3) (d).

160 (c) The trial court may impose an upward departure sentence  
161 only if the sentence is accompanied by a written statement from  
162 the court specifying the reasons for the departure, filed within  
163 7 days after the date of sentencing. A written transcription of  
164 orally stated reasons for this departure is permissible if it is  
165 filed by the court within 7 days after the date of sentencing.

166 (d) The imposition of a split sentence of incarceration  
167 followed by community control or probation does not by itself  
168 constitute an upward departure. For the purpose of determining  
169 the maximum sentence authorized by law, any community control  
170 portion of a split sentence does not constitute a term of  
171 imprisonment.

172 (e) An upward departure sentence must be within any  
173 relevant maximum sentence limitations provided by s. 775.082.

174 (2) An upward departure sentence is discouraged unless

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175 there are circumstances or factors that reasonably justify the  
176 departure. Aggravating circumstances to be considered include,  
177 but are not limited to, those listed in subsection (3). The  
178 failure of the trial court to impose a sentence within the range  
179 authorized by s. 921.0024(3) is subject to appellate review  
180 under chapter 924, but the extent of the departure from such  
181 range is not subject to appellate review.

182 (3) Aggravating circumstances under which an upward  
183 departure sentence is reasonably justified include, but are not  
184 limited to:

185 (a) The departure results from a legitimate, uncoerced plea  
186 bargain.

187 (b) The offense was one of violence and was committed in a  
188 manner that was especially heinous, atrocious, or cruel.

189 (c) The offenses before the court for sentencing arose out  
190 of separate episodes, the primary offense is scored at offense  
191 level 4 or higher, and the defendant has committed five or more  
192 offenses within a 180-day period which have resulted in  
193 convictions.

194 (d) The primary offense is scored at offense level 3, and  
195 the defendant has committed eight or more offenses within a 180-  
196 day period which have resulted in convictions.

197 (e) The offense before the court for disposition was  
198 committed within 6 months after the defendant was discharged  
199 from probation, community control, or pretrial intervention or  
200 diversion or released from state prison, whichever is later.

201 (f) The defendant occupied a leadership role in a criminal  
202 organization.

203 (g) The offense was committed by a public official under

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204 color of office.

205 (h) The defendant knew the victim was a law enforcement  
206 officer at the time of the offense, the offense was a violent  
207 offense, and that status is not an element of the primary  
208 offense.

209 (i) The offense created a substantial risk of death or  
210 great bodily harm to many persons or to one or more children.

211 (j) The victim was especially vulnerable due to age or  
212 physical or mental disability.

213 (k) The offense was motivated by prejudice based on race,  
214 color, ancestry, ethnicity, religion, sexual orientation, or  
215 national origin of the victim.

216 (l) The victim suffered extraordinary physical or emotional  
217 trauma or permanent physical injury or was treated with  
218 particular cruelty.

219 (m) The victim was physically attacked by the defendant in  
220 the presence of one or more members of the victim's family.

221 (n) The offense resulted in substantial economic hardship  
222 to the victim and consisted of an illegal act or acts committed  
223 by means of concealment, guile, or fraud to obtain money or  
224 property, to avoid payment or loss of money or property, or to  
225 obtain business or professional advantage, when two or more of  
226 the following circumstances were present:

227 1. The offense involved multiple victims or multiple  
228 incidents per victim;

229 2. The offense involved a high degree of sophistication or  
230 planning or occurred over a lengthy period of time;

231 3. The defendant used position or status to facilitate the  
232 commission of the offense, including positions of trust,



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233 confidence, or fiduciary relationship; or

234 4. The defendant was in the past involved in other conduct  
235 similar to that involved in the current offense.

236 (o) The offense was committed in order to prevent or avoid  
237 arrest, to impede or prevent prosecution for the conduct  
238 underlying the offense, or to effect an escape from custody.

239 (p) The defendant is not amenable to rehabilitation or  
240 supervision, as evidenced by an escalating pattern of criminal  
241 conduct, which is a progression from nonviolent to violent  
242 crimes, a progression of increasingly violent crimes, or a  
243 pattern of increasingly serious criminal activity.

244 (q) The defendant induced a minor to participate in any of  
245 the offenses pending before the court for disposition.

246 (r) The primary offense is scored at offense level 7 or  
247 higher, and the defendant has been convicted of an additional  
248 offense that scored, or would have scored, at an offense level 8  
249 or higher.

250 (s) The defendant has an extensive unscorable juvenile  
251 record.

252 (t) The defendant committed an offense involving sexual  
253 contact or sexual penetration, and, as a direct result of the  
254 offense, the victim contracted a sexually transmissible disease.

255 Section 4. Subsection (1) of section 924.06, Florida  
256 Statutes, is amended to read:

257 924.06 Appeal by defendant.—

258 (1) A defendant may appeal any of the following ~~from~~:

259 (a) A final judgment of conviction when probation has not  
260 been granted under chapter 948, except as provided in subsection

261 (3) .†

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- 262 (b) An order granting probation under chapter 948.~~+~~
- 263 (c) An order revoking probation under chapter 948.~~+~~
- 264 (d) A sentence, on the ground that it is illegal.~~+~~~~or~~
- 265 (e) A sentence imposed under s. 921.0024 of the Criminal
- 266 Punishment Code which exceeds the statutory maximum penalty
- 267 provided in s. 775.082 for an offense at conviction, or the
- 268 consecutive statutory maximums for offenses at conviction,
- 269 unless otherwise provided by law.
- 270 (f) A sentence imposed outside the range authorized by s.
- 271 921.0024(3).
- 272 Section 5. Subsection (1) of section 924.07, Florida
- 273 Statutes, is amended to read:
- 274 924.07 Appeal by state.—
- 275 (1) The state may appeal any of the following ~~from~~:
- 276 (a) An order dismissing an indictment or information or any
- 277 count thereof or dismissing an affidavit charging the commission
- 278 of a criminal offense, the violation of probation, the violation
- 279 of community control, or the violation of any supervised
- 280 correctional release.
- 281 (b) An order granting a new trial.
- 282 (c) An order arresting judgment.
- 283 (d) A ruling on a question of law when the defendant is
- 284 convicted and appeals from the judgment. Once the state's cross-
- 285 appeal is instituted, the appellate court shall review and rule
- 286 upon the question raised by the state regardless of the
- 287 disposition of the defendant's appeal.
- 288 (e) The sentence, on the ground that it is illegal.
- 289 (f) A judgment discharging a prisoner on habeas corpus.
- 290 (g) An order adjudicating a defendant insane under the

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291 Florida Rules of Criminal Procedure.

292 (h) All other pretrial orders, except that it may not take  
293 more than one appeal under this subsection in any case.

294 (i) A sentence imposed below the lowest permissible  
295 sentence established by the Criminal Punishment Code under  
296 chapter 921.

297 (j) A ruling granting a motion for judgment of acquittal  
298 after a jury verdict.

299 (k) An order denying restitution under s. 775.089.

300 (l) An order or ruling suppressing evidence or evidence in  
301 limine at trial.

302 (m) An order withholding adjudication of guilt in violation  
303 of s. 775.08435.

304 (n) A sentence imposed outside the range authorized by s.  
305 921.0024(3).

306 Section 6. Section 950.021, Florida Statutes, is created to  
307 read:

308 950.021 Sentencing of offenders to county jail.-

309 (1) Notwithstanding s. 921.0024 or any other provision of  
310 law, and effective for offenses committed on or after July 1,  
311 2017, a court may sentence an offender to a term in the county  
312 jail in the county where the offense was committed for up to 24  
313 months if the offender meets all of the following criteria:

314 (a) The offender's total sentence points score, as provided  
315 in s. 921.0024, is more than 44 points but no more than 60  
316 points.

317 (b) The offender's primary offense is not a forcible felony  
318 as defined in s. 776.08; however, an offender whose primary  
319 offense is a third degree felony under chapter 810 is eligible

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320 to be sentenced to a county jail under this paragraph.

321 (c) The offender's primary offense is not punishable by a  
322 minimum mandatory sentence of more than 24 months.

323 (2) (a) The court may only sentence an offender to a county  
324 jail pursuant to this section if there is a contractual  
325 agreement between the chief correctional officer of that county  
326 and the Department of Corrections.

327 (b) If the chief correctional officer of a county requests  
328 the Department of Corrections to enter into a contract that  
329 allows offenders to be sentenced to the county jail pursuant to  
330 subsection (1), subject to the restrictions of this paragraph  
331 and subsections (3) and (6), the Department of Corrections must  
332 enter into such a contract. The contract must specifically  
333 establish the maximum number of beds and the validated per diem  
334 rate. The contract must provide for per diem reimbursement for  
335 occupied inmate days based on the contracting county's most  
336 recent annual adult male custody or adult female custody per  
337 diem rates, not to exceed \$60 per inmate.

338 (3) A contract under this section is contingent upon a  
339 specific appropriation in the General Appropriations Act.  
340 Contracts shall be awarded by the Department of Corrections on a  
341 first-come, first-served basis up to the maximum appropriation  
342 allowable in the General Appropriations Act for this purpose.  
343 The maximum appropriation allowable consists of funds  
344 appropriated in or transferred to the specific appropriation in  
345 the Inmates Sentenced to County Jail appropriation category.  
346 Before any transferred appropriation under this section, the  
347 Inmates Sentenced to County Jail appropriation category provides  
348 for an estimated incremental appropriation for county jail beds

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349 contracted under this section in excess of the Department of  
350 Corrections' per diem for adult male and female inmates.

351 (4) The Department of Corrections shall transfer funds  
352 pursuant to s. 216.177 from other appropriation categories  
353 within the Adult Male Custody Operations or Adult and Youthful  
354 Offender Female Custody Operations budget entities to the  
355 Inmates Sentenced to County Jail appropriation category in an  
356 amount necessary to satisfy the requirements of each executed  
357 contract, but not to exceed the Department of Corrections'  
358 average total per diem published for the preceding fiscal year  
359 for adult male custody or adult and youthful offender female  
360 custody inmates for each county jail bed contracted.

361 (5) The Department of Corrections shall assume maximum  
362 annual value of each contract when determining the full use of  
363 funds appropriated and must ensure that the maximum  
364 appropriation allowable is not exceeded.

365 (6) All contractual per diem rates under this section as  
366 well as the per diem rates used by the Department of Corrections  
367 must be validated by the Auditor General before payments are  
368 made.

369 Section 7. For the purpose of incorporating the amendments  
370 made by this act to sections 924.06 and 924.07, Florida  
371 Statutes, in references thereto, subsection (3) of section  
372 958.04, Florida Statutes, is reenacted to read:

373 958.04 Judicial disposition of youthful offenders.—

374 (3) The provisions of this section shall not be used to  
375 impose a greater sentence than the permissible sentence range as  
376 established by the Criminal Punishment Code pursuant to chapter  
377 921 unless reasons are explained in writing by the trial court

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378 judge which reasonably justify departure. A sentence imposed  
379 outside of the code is subject to appeal pursuant to s. 924.06  
380 or s. 924.07.

381 Section 8. This act shall take effect July 1, 2017.